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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,497	10/24/2002	Haren S. Gandhi	FCHM 0104 PUS / 201-0553	9077
28395	7590	01/05/2005		EXAMINER
BROOKS KUSHMAN P.C./FGTL				JOHNSON, CHRISTINA ANN
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22ND FLOOR			ART UNIT	PAPER NUMBER
SOUTHFIELD, MI 48075-1238			1725	

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/065,497	GANDHI ET AL.	
	Examiner Christina Johnson	Art Unit 1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 October 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Sung et al.

Sung et al. (US 6,087,298) discloses a catalyst apparatus comprising an upstream catalyst and a downstream catalyst, each having a first and second layer, useful in the purification of exhaust gas. It is taught that a useful and preferred first upstream layer has: from about 0.003 to about 0.6 g/in³ of at least one palladium component; from 0 to about 0.065 g/in³ of at least one first platinum and/or first rhodium component; from about 0.15 to about 2.0 g/in³ of a first support; from about 0.05 to about 2.0 g/in³ of the total of the first oxygen storage components in the first layer; from 0.0 and preferably about 0.025 to about 0.5 g/in³ of at least one first alkaline earth metal component; from 0.0 and preferably about 0.025 to about 0.5 g/in³ of a first zirconium component; and from 0.0 and preferably about 0.025 to about 0.5 g/in³ of at least one first rare earth metal component selected from the group consisting of ceria metal

Art Unit: 1725

components, lanthanum metal components and neodymium metal component (column 11, line 64 – column 12, line 13).

It is taught that a useful and preferred second upstream layer has: from about 0.003 g/in³ to about 0.6 g/in³ of at least one second palladium component; from 0.0 g/in³ to about 0.065 g/in³ of at least one first platinum and/or rhodium component; from about 0.15 g/in³ to about 2.0 g/in³ of a second support; from 0.0 and preferably about 0.025 g/in³ to about 0.5 g/in³ of at least one second rare earth metal component selected from the group consisting of lanthanum metal components and neodymium metal components; from 0.0 and preferably about 0.25 g/in³ to about 0.5 g/in³ of at least one second alkaline earth metal component; and from 0.0 and preferably about 0.025 to about 0.5 g/in³ of a second zirconium component (column 12, lines 14-30).

It is taught that the first layer requires an alkaline earth metal component and/or a rare earth component, and the second layer requires an alkaline earth metal component and/or a rare earth metal component (column 12, lines 30-35). The first and/or second layer can have from 0.0 to about 2.0 g/in³ of an oxygen storage composite comprising particulate form of ceria-zirconia composite (column 12, lines 35-38). The first upstream layer can be supported on a substrate, preferably a honeycomb carrier, and the second upstream layer is supported on the first upstream layer applied on the substrate (column 12, lines 40-45).

Next, the reference teaches a useful and preferred first downstream layer has: from about 0.0175 to about 0.3 g/in³ of palladium component; from about 0 to about 0.065 g/in³ of a first platinum component; from about 0.15 to about 2.0 g/in³ of a first

Art Unit: 1725

support; from about 0.025 to about 0.5 g/in³ of at least one first alkaline earth metal component; from about 0.025 to about 0.5 g/in³ of a first zirconium component; and from about 0.025 to about 0.5 g/in³ of at least one first rare earth metal component selected from the group consisting of ceria metal components, lanthanum metal components and neodymium metal component (column 15, lines 5-22).

It is further taught that a useful and preferred second downstream layer has: from about 0.001 g/in³ to about 0.03 g/in³ of a rhodium component; from about 0.001 g/in³ to about 0.15 g/in³ of platinum; from about 0.15 g/in³ to about 1.5 g/in³ of a second support; from about 0.1 to 2.0 g/in³ of a second oxygen storage composition; from about 0.025 g/in³ to about 0.5 g/in³ of at least one second rare earth metal component selected from the group consisting of lanthanum metal components and neodymium metal components; and from about 0.025 to about 0.5 g/in³ of a second zirconium component (column 15, lines 23-37). It is taught the first downstream layer can be supported on a substrate, preferably a honeycomb carrier, and the second downstream layer is supported on the first layer applied on the substrate (column 15, lines 40-45).

The reference teaches that hydrogen sulfide suppressants, such as nickel or iron oxide, may be added to either the upstream or downstream catalyst composition (column 23, lines 25-35 and column 30, lines 63-67).

With respect to claims 1-20 and 31, the upstream catalyst is considered to meet the first catalyst, with the first upstream layer corresponding to the claimed second zone and the second upstream layer corresponding to the first zone, and the downstream catalyst is considered to meet the second catalyst. With respect to claims 21-30, the

Art Unit: 1725

upstream catalyst is considered to meet the first catalyst, with the first upstream layer corresponding to the claimed bottom layer and the second upstream layer corresponding to the top layer, and the downstream catalyst is considered to meet the second catalyst. With respect to claim 32, the first upstream layer is considered to correspond to claimed second zone, the second upstream layer is considered to correspond to the first zone, and the downstream catalyst is considered to meet the third zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Sung et al.

3. Claim 31 is rejected under 35 U.S.C. 102(b) as being anticipated by EP 1 108 863.

EP 1 108 863 discloses a catalyst composition useful in the purification of exhaust gases. With reference to Example (page 7), the reference teaches the preparation of a closed coupled three-way catalyst (TWC) and a NO_x reducing catalyst. The closed couple TWC comprises the noble metals, Pt, Pd, and Rh, and Ce and Zr carried on an activated alumina powder, coated on a monolithic substrate. The NO_x reducing catalyst comprises Pd-carried alumina, Pt-carried alumina, and Rh-carried alumina coated on a monolithic substrate which further contains cesium oxide. The NO_x reducing catalyst does not contain CeO₂. It is taught that the NO_x reducing catalyst was disposed downstream of the closed coupled TWC (page 7, lines 55-59). With respect to the language of the claims, the closed coupled TWC is considered to meet the claimed

first zone and the NOx reducing catalyst is considered to meet the claimed second zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by EP 1 108 863.

4. Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Deeba et al.

Deeba et al. (US 6,375,910) discloses a catalyst composition useful in the purification of exhaust gas. With reference to Example 1 (columns 18-19), the reference teaches a multi-zoned catalytic trap F prepared by juxtaposing catalytic trap C and catalytic trap E having the following compositions:

	Catalytic Trap C	Catalytic Trap E
Bottom Layer:	Pt: 60 g/ft ³ Rh: 15 g/ft ³ NOx sorbent: 0.15 g/in ³ BaO, 0.10 g/in ³ CeO ₂ -ZrO ₂ , 0.08 g/in ³ ZrO ₂	Pt: 30 g/ft ³ Rh: 5 g/ft ³ NOx sorbent: 0.15 g/in ³ BaO, 0.08 g/in ³ ZrO ₂
Top Layer:	Pd: 90 g/ft ³ NOx sorbent: 0.20 g/in ³ BaO, 0.25 g/in ³ CeO ₂ -ZrO ₂ , 0.08 g/in ³ ZrO ₂	Pd: 50 g/ft ³ NOx sorbent: 0.25 g/in ³ BaO, 0.08 g/in ³ ZrO ₂

With respect to the language of the claims, Trap C is considered to meet the claimed first zone and Trap E is considered to meet the claimed second zone.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Deeba et al.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sung et al.

The teachings of Sung et al. (US 6,087,298) are as described above for claims 1-32. If it is considered that the disclosure of Sung et al. is not sufficiently specific to constitute anticipation within the meaning of 35 USC 102(b), then a rejection under 35 USC 103(a) is applicable. In this case, the reference does not disclose the exact amounts of the components required by the instant claims, although Sung et al. discloses ranges of components which overlap the composition instantly claimed. With respect to the encompassing and overlapping ranges previously discussed, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time of invention to select the portion of the prior art's range which is within the range of the applicants' claims because it has been held *prima facie* case of obviousness to select a

value in a known range by optimization for the results. *In re Boesch*, 205 USPQ 215. Additionally, the subject matter as a whole would have been obvious to one of ordinary skill in the art at the time invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a *prima facie* case of obviousness. *In re Malagari*, 182 USPQ.

Response to Arguments

Applicant's arguments filed October 25, 2004 have been fully considered but they are not persuasive.

With respect to the rejection over the Sung et al. reference, applicant argues that Sung et al. teaches a three way catalyst composition while the instant claims require a NOx trapping catalyst. This argument has been considered but is not persuasive. The difference in functions between the two compositions are noted by the examiner. However, the compositions appear to be structurally identical. Therefore, the difference in function is not sufficient to distinguish over the prior art. Applicant has not shown how the instant catalyst differs structurally from the catalyst of the prior art. Also, it is noted that this argument is not commensurate in scope with all of the claims. Refer to claims 31 and 32 which do not require any trapping function. Applicant further argues that the Sung reference does not disclose a first zone which is devoid of cerium. However, the reference does not require cerium – lanthanum or neodymium may be used. Therefore, Sung et al. discloses embodiments which anticipate or obviate the instant claims.

Art Unit: 1725

With respect to the rejections over the EP reference and Deeba et al. reference, applicant argues that the references do not teach a third zone. The examiner notes that the rejections were intended to be made for claim 31 which does not require a third zone. The rejections have been corrected above. However, due to the inadvertent typographical error in the statement of rejection, this action has been made non-final.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Johnson whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christina Johnson
Christina Johnson
Patent Examiner
Art Unit 1725

12/29/04

CAJ
December 29, 2004